

Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGRE-00 AID-05

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DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01

TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01

SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12

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TO SECSTATE WASHDC 4101

LIMITED OFFICIAL USE SECTION 1 OF 2 USUN 1962

FROM: LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: INFORMAL PLENARY ON ARTICLE 14 OF PART IV (CDS)

OF 16 JUNE 1977

1. SUMMARY: IN 14(1) THE USSR PROPOSED SUBSTITUTION FOR THE WORDS "HAVE FAILED TO COMPLY WITH THE RELEVANT PROVISIONS OF THE PRESENT CONVENTION FOR THE PROMPT RELEASE OF THE VESSELS AND ITS CREW" BY THE WORDS "HAVE FILED TO TAKE MEASURES FOR THE IMMEDIATE RELEASE OF THE VESSEL OR ITS CREW". MOST OF THE GROUP OF 77 PREFERRED TO REPLACE THE REFERENCE TO THE "RELEVANT PROVISIONS" BY LISTING THE RELEVANT ARTICLES. THE USSR, SUPPORTED BY A NUMBER OF ARAB STATES, PROPOSED THAT THE FOLLOWING SENTENCE BE ADDED TO THE END OF 14(4): "IN THE EVENT OF ANY DELAY IN COMPLYING WITH THAT DECISION, THE QUESTION OF RELEASING THE VESSEL AND OF PAYMENT OF COMPENSATION FOR THE LOSS RESULTING FROM THE DELAY SHALL BE DECIDED BY THE USE OF PROCEDURES CHOSEN BY THE CONTRACTING PARTIES IN ACCORDANCE WITH PART IV, ARTICLE 9, OF THE PRESENT

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CONVENTION." THE UNITED STATES SUPPORTED THE PROPOSAL OF BRAZIL TO ARTICLE 14(1) WHICH STATES THAT "THE QUESTION OF RELEASE MAY BE BROUGHT BY THE FLAG STATE," ON CONDITION THAT THE WORDS "OR ON BEHALF OF" BE INSERTED BETWEEN "BY" AND "THE FLAG STATE". ALTHOUGH 14(2) WOULD UNDER THIS PROPOSAL BE DELETED, IT MIGHT STILL ALLOW A FLAG STATE TO APPOINT THE OWNER, OPERATOR, OR MASTER OF THE VESSEL TO

ACT ON ITS BEHALF.

2. 14(1) (JURISDICTION TO RELEASE)

THE MOST SIGNIFICANT INTERVENTIONS WERE MADE BY THE UK AND THE USSR. THE USSR REPRESENTATIVE BELIEVED THAT THE LANGUAGE OF ARTICLE 14(1) REV. 2 "HAVE FAILED TO COMPLY WITH THE RELEVANT PROVISIONS OF THE PRESENT CONVENTION" WAS TOO RESTRICTIVE, GIVEN THE PROVISIONS IN PARTS II AND III WHEREBY THE COASTAL STATE COULD SEIZE VESSELS AND SUGGESTED ITS REPLACEMENT BY "HAVE FAILED TO TAKE MEASURES FOR THE IMMEDIATE RELEASE OF THE VESSEL OR ITS CREW." HE REJECTED THE PROPOSAL FOR AN EXPLICIT REFERENCE IN ART. 14(1) TO ARTICLES 61(II) AND 36(III) AND OTHER POSSIBLE RELEVANT ARTICLES. HE INDICATED THAT THERE WERE MANY INSTANCES OTHER THAN ARTICLES 61(II) AND 36(III) IN WHICH SOVEREIGN AND JURISDICTIONAL POWERS VESTED IN THE COASTAL STATE WOULD GIVE THE COASTAL STATE THE POWER TO SEIZE A VESSEL. HE CITED AS EXAMPLES VIOLATIONS BY FOREIGN VESSELS OF RESOURCE AND SCIENTIFIC RESEARCH REGULATIONS OF THE COASTAL STATE RELATING TO THE CONTINENTAL SHELF BEYOND THE ECONOMIC ZONE; AND STATED THAT IN SUCH INSTANCES 14(1) SHOULD APPLY, AS THE RELEVANT PROVISIONS IN PARTS II AND III DID NOT PROVIDE FOR BONDING AND RELEASE. THE UK REPRESENTATIVE, ALTHOUGH PREFERRING A RESIDUAL FORUM OTHER THAN THE LAW OF THE SEA TRIBUNAL (LOST) IN THE CHAIRMAN'S REVISION OF 14(1), STATED THAT IT COULD ACCEPT HIS REVISION. HE STRESSED THE NEED FOR SPEEDY ACTION REGARDLESS OF THE APPLICABLE FORUM; IN ADDITION TO THE CHAMBER OF SUMMARY PROCEDURE OF THE LOST, AS PROVIDED IN ARTICLE 16(3) OF ANNEX II, IT WOULD BE LIMITED OFFICIAL USE

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DESIRABLE TO PROVIDE FOR SOME SPECIALLY EXPEDITIOUS PROCEDURE FOR THE OTHER FORUM IN 14(1). MOROCCO, IRAQ, OMAN, HONDURAS, VENEZUELA AND OTHER SPEAKERS, STRESSING THE NEED FOR CLARITY AS TO THE SCOPE OF JURISDICTION OF THE INTERNATIONAL FORUM IN ARTICLE 14, PREFERRED CLEAR REFERENCE TO ARTICLES 61(II) AND 36(III). SWEDEN PREFERRED THE INTERNATIONAL COURT OF JUSTICE IN LIEU OF THE LOST AS THE RESIDUAL FORUM. OMAN PREFERRED "ALLEGED TO HAVE FAILED" TO "HAVE FAILED," AS THE FORMULATION IN REV.2 WOULD PLACE TOO GREAT A BURDEN OF PROOF ON THE FLAG STATE. THE CHAIRMAN STATED THAT THE APPROPRIATE PLACE TO MAKE CHANGES AS TO THE JURISDICTIONAL SCOPE OF 14(1) WAS IN PARTS II AND III OF THE CONVENTION, AND ASSERTED THAT ARTICLE 14 DID NOT APPLY TO DETENTION IN THE TERRITORIAL SEA, WHICH WAS UNDER THE SOVEREIGNTY OF THE COASTAL STATE.

3. 14(2) (APPLICATION FOR RELEASE)

ECUADOR, TUNISIA, OMAN, ALGERIA, HONDURAS, URUGUAY, THE NETHERLANDS, AND ARGENTINA SUPPORTED BRAZIL'S MOTION TO DELETE THE LAST HALF OF ARTICLE 14(2) ("OR ON ITS BEHALF BY

EITHER A DIPLOMATIC OR CONSULAR OFFICER"). SWEDEN STATED IT COULD SUPPORT OR DELETE THE LAST HALF OF ART. 14(2). GHANA SUPPORTED THE CHAIR'S MODIFICATION OF ARTICLE 14(2). THE UK PREFERRED REV. 1, BUT COULD ACCEPT THE INCORPORATION IN 14(1) OF THE LANGUAGE "BY OR ON BEHALF OF THE FLAG STATE," A VARIATION OF THE PRESIDENT" REVISION TO 14(2).

4. 14(3) (QUALIFICATION OF RELEASE)

THE UK TABLED A PROPOSAL DESIGNED TO MOLLIFY THE CONCERNS OF THE LATINS AS TO THE ENCROACHMENT OF THE JURISDICTION OF THE INTERNATIONAL FORUM ON THEIR RESPECTIVE NATIONAL FORA, PROPOSING THE ADDITION OF THE FOLLOWING SENTENCE TO THE END OF 14(3): "THE AUTHORITIES OF THE CONTRACTING PARTIES IN WHOSE TERRITORY THE VESSEL IS DETAINED SHALL REMAIN COMPETENT TO RELEASE THE VESSEL AT ANY TIME."

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5. 14(4) (DECISION TO RELEASE)

THE UNITED KINGDOM SUPPORTED THE BRAZILIAN PROPOSAL TO DELETE THE LAST HALF OF 14(4) ("UPON THE POSTING OF THE BOND OR OTHER SECURITY ORDERED BY THE COURT OR TRIBUNAL"), AND SUGGESTED THE FOLLOWING REDRAFT OF (4): "THE DECISION OF SUCH COURT OR TRIBUNAL AS TO THE RELEASE OF A VESSEL SHALL BE COMPLIED WITH WITHOUT DELAY." THE UK WAS SUPPORTED BY THE FRG, WHICH ALSO STATED THAT STATES COULD PROVIDE THROUGH BILATERAL AGREEMENTS FOR THE RELEASE OF VESSELS. IRAQ AND

GREECE SUPPORTED THE USSR'S PREVIOUS PROPOSAL ON COMPENSATION OF THE FLAG STATE FOR UNDUE DELAY IN RELEASING THE VESSEL.

6. THE UNITED STATES REPRESENTATIVE INDICATED THAT IT WOULD ACCEPT THE BRAZILIAN PROPOSAL TO ABOLISH 14(2) AND TO INCORPORATE IT INTO 14(1) AS PROPOSED BY BRAZIL, BUT WITH THE INSERTION OF THE WORDS "OR ON BEHALF OF" BETWEEN "BY" AND "THE FLAG STATE." AGREEING WITH BRAZIL, HE INDICATED THAT THE ONE-WEEK PERIOD AS CONTAINED IN THE CHAIRMAN'S LIMITED OFFICIAL USE

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PROPOSED AMENDMENT, IF RUNNING FROM THE MOMENT OF DETENTION, WAS TOO SHORT A PERIOD. HE SUGGESTED THAT THE ONE-WEEK PERIOD AFTER WHICH A FLAG STATE COULD, FAILING AGREEMENT WITH THE DETAINING STATE, BRING THE QUESTION OF RELEASE BEFORE THE LOST SHOULD COMMENCE RUNNING AFTER THE FLAG STATE HAS INDICATED TO THE DETAINING STATE ITS INTENTION OF BRINGING THE QUESTION OF RELEASE BEFORE THE INTERNATIONAL TRIBUNAL, AND WAS NOT ABLE TO REACH AGREEMENT ON A FORUM.

7. THE CHAIRMAN, IN RESPONSE TO THE FRG'S PROPOSAL, SAID THAT HE WOULD TAKE NOTE OF ITS PROPOSAL TO ADD WORDS SUCH AS "OR ANY OTHER ARRANGEMENT RELATED THERETO" IN 14(1), AND THAT THE UK'S PROPOSED AMENDMENT TO 14(3) WOULD CAUSE NO PROBLEM. THE CHAIRMAN THEN STATED THAT THE PLENARY WOULD NEXT CONSIDER ART. 12 DURING THE NEXT SESSION ON MONDAY, 20 JUNE. UPON CONCLUSION OF THE DEBATE ON ART.12, THE PLENARY WOULD DISCUSS ARTICLES 17 AND 18.

8. COPIES OF AMENDMENTS OF 13 JUNE 1977 TO ARTICLE 14 BY THE CHAIRMAN AND BY THE DELEGATIONS WILL BE PROVIDED.

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Message Attributes

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